

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4435 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

INDELMEGT INDUSTREIS

Versus

MANSUKHBHAI GOVINDBHAI

Appearance:

MR GM JOSHI for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 21/07/2000

ORAL JUDGEMENT

The petitioner challenges the award of the Labour Court in Recovery Application No. 646/85 made on 27.4.1988, by which the respondent workmen were awarded a total sum of Rs. 6,538.50 paise being the amount held to be due to them towards their entitlement to the cost of living allowance. The claims of these individual

workmen on this count varied from Rs. 924.90 to Rs. 1541.40, as mentioned in the award.

The learned Counsel appearing for the petitioner contended that the Labour Court has misdirected itself by not taking into account the fact that the total amount paid to the workmen included the said allowance. It was contended that the liability of the employer was to pay minimum rate of wages under Section 12 of the Minimum Wages Act, 1948 and even if the bifurcation was not done in the registers, no additional liability for the cost of living allowance can be foisted if it is established that the employer had paid wages at a rate not less than the minimum rate of wages fixed by the notification. It was submitted that the total wages which were actually paid to these respondents included the cost of living allowance and merely because it was not separately indicated, it cannot be said that it was not a part of the minimum rate of wages which were paid to the respondents. It was also contended that even the application which was made by the respondents was only for getting the difference between the wages which they were getting and the minimum wages as notified. It was argued that the Labour Court did not take into consideration the fact that the cost of living allowance was included in the wages which were paid to the respondents and that no bifurcation was essential. Moreover, it was argued, only one of the employees was examined and the Labour Court could not have adopted the same yardstick for others.

It appears from the record that the Labour Court referring to the settlement (Exh. 13/1) which was entered into between the workmen and the employer on 10.6.1984, found that the increase of Rs. 3 per day for the year 1984, Rs. 2.25 per day for the year 1985 and Rs. 2 per day for the year 1986 in the wages was given on the basis of that agreement. It was stipulated in the settlement that if in future there was any wage policy made applicable to the engineering industries, then the difference of wages will be paid to the workmen on the basis of such wage policy. The Labour Court on the basis of this agreement and the relevant pay registers, held that the difference which was paid to the workmen was paid on the basis of the settlement and that the difference which was paid was not towards the payment of cost of living allowance. The Labour Court found on the basis of the material on record that the amount of cost of living allowance was not paid to the workmen as was required to be paid by the Notification dated 26th Sept. 1984. The finding of the Labour Court that from the

material on record it appeared that the amount of cost of living allowance was not paid as per the Notification, is a finding of fact warranting no interference by this Court. Furthermore, the liability of the employer as per the Minimum Wages Act, 1948 will not preclude the workman from seeking recovery of a higher amount under Section 33C(2) of the Industrial Disputes Act, if his entitlement to such higher amount is established before the Labour Court. Even if the contractual rate of wage is higher than the basic rate of wage, that will not absolve the employer from paying the cost of living allowance. Once it is established that by contract a particular rate of wage is payable to the workman, and that cost of living allowance is also payable under the law, the workman can always approach the Labour Court under Section 33C(2), independently of the liability of the employer to pay minimum rate of wages under Section 12 of the Minimum Wages Act, 1948. In the application, the respondents had clearly claimed that the cost of living allowance was not paid to them and it is in this context they say that the minimum rate of wages which included cost of living allowance was not paid to them. The Labour Court has, for valid reasons and in lawful exercise of its jurisdiction, made the award of these small amounts in favour of the respondents and there is absolutely no warrant for interfering with the impugned award. The petition is therefore, rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

*/Mohandas